

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MOMBASA**  
**ELC CASE NO.62 OF 2019**

**ALI CHARO MTILE ..... 1<sup>ST</sup> PLAINTIFF**  
**HARON TETE ..... 2<sup>ND</sup> PLAINTIFF**  
**CHARO DZONGO MTILE ..... 3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**JOSEPH MTALAKI MWAMBURI** (*Suing as the Legal Representative of the Estate of the Late Samuel Danson Mwamburi*) ..... **1<sup>ST</sup> DEFENDANT**

**REGISTRAR OF LANDS, KILIFI ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**Background**

1. By a Plaint dated 4<sup>th</sup> April, 2019, Ali Charo Mtile, Haron Tete and Charo Dzongo Mtile (the Plaintiffs) pray for Judgment against the two (2) Defendants jointly and severally for the following:

- a) **A declaration that the Plaintiffs are the rightful owners of that parcel of land known as Kilifi/Mtwapa/53;**

- b) An (order of) injunction restraining the 1<sup>st</sup> Defendant by himself, his agents, servants and/or employees from occupying, alienating, working or in any way whatsoever dealing with that parcel of land known as Kilifi/Mtwapa/53;**
- c) An order directing the 2<sup>nd</sup> Defendant to rectify the title of the Plot known as Kilifi/Mtwapa/53 by removing the name of the 1<sup>st</sup> Defendant and replacing the same with the names of the Plaintiffs as the proprietor of that parcel of land;**
- d) Costs of this suit; and**
- e) Any other just relief this Honourable Court may deem appropriate.**

2. Those prayers arise from the Plaintiffs' contention that they are the beneficial owners of the parcel of land formerly known as plot No. 53 Mtwapa Scheme measuring approximately 6.22 acres. It is the Plaintiff's case that they have a claim over the suit land and on which they currently reside.

3. The Plaintiffs aver that sometime back their grandfather allowed the 1<sup>st</sup> Defendant to occupy a portion of the suit land as a licensee. The Plaintiffs accuse the 1<sup>st</sup> Defendant of fraudulently and illegally registering the suit land in his name in collusion with the 2<sup>nd</sup> Defendant. It is further their case that around March 2019, the 1<sup>st</sup> Defendant started sending emissaries and agents to view the property with the view of alienating the same.
4. Joseph Mtalaki Mwamburi, sued as the Legal Representative of the Estate of the late Samuel Danson Mwamburi (the 1<sup>st</sup> Defendant) is opposed to the claim. In his Statement of Defence dated 1<sup>st</sup> November 2023, the 1<sup>st</sup> Defendant denies that the Plaintiffs have any customary rights to claim over the suit property and/or that they reside on the same.
5. Further and in addition to the foregoing the Defendant denies the Plaintiff's assertion that their grandfather had allowed him to occupy the suit property as a licensee. On the contrary, the 1<sup>st</sup> Defendant avers that the suit property was duly and lawfully registered in the name of Samuel

Danson Mwamburi (now deceased) and whose estate he represents.

6. The Land Registrar, Kilifi (the 2<sup>nd</sup> Defendant) is equally opposed to the Plaintiff's claim. In his Statement of Defence dated 20<sup>th</sup> March 2025, the 2<sup>nd</sup> Defendant avers that it is a stranger to the claim and denies that he has secretly colluded with the 1<sup>st</sup> Defendant to have the property registered in the 1<sup>st</sup> Defendant's name.
7. At the trial herein, all the three Plaintiffs testified in support of their case. On the other hand, the 1<sup>st</sup> Defendant testified as the sole witness for the Defence.

### **Analysis and Determination**

8. I have carefully perused and considered the Pleadings filed by the parties, the testimonies of the witnesses as well as the evidence adduced at the trial. I have similarly perused and considered the submissions placed before me by the Learned Counsels representing the parties.
9. By the suit herein, the three (3) Plaintiffs pray for a declaration that they are the rightful owners of the parcel of land known as Kilifi/Mtwapa/53. On that basis, they pray for

an order of injunction to restrain the 1<sup>st</sup> Defendant from occupying, alienating, working on or in any manner whatsoever dealing with the said parcel of land. Ultimately, the Plaintiffs pray for an order directing the 2<sup>nd</sup> Defendant to rectify the title for the said parcel of land by removing the name of the 1<sup>st</sup> Defendant therefrom and to replace the same with the names of the Plaintiffs as the rightful proprietors of the land.

10. Those prayers stem from the Plaintiffs contention that they are the beneficial owners of the said parcel of land formerly known as Plot No. 53 Mtwapa Scheme. It was the Plaintiffs' case that the suit property previously belonged to their father and grandfather who had some time back allowed the 1<sup>st</sup> Defendant to occupy a portion of the suit land as a licensee.
11. The Plaintiffs accuse the 1<sup>st</sup> Defendant of colluding with the 2<sup>nd</sup> Defendant to fraudulently cause the suit property to be registered in the name of the 1<sup>st</sup> Defendant and thereafter attempting to dispose of the land to third parties.

12. The Plaintiffs had initially sued Samuel Danson Mwamburi as the 1<sup>st</sup> Defendant. Following Samuel's death on 23<sup>rd</sup> January 2022, he was substituted by his son and legal representative Jospeh Mtalaki Mwamburi.
13. According to the 1<sup>st</sup> Plaintiff (PW1) the suit property was initially registered in the name of his father one Mwadzombo Munga when some time around 1978, the 1<sup>st</sup> Defendant arrived and asked for a place to keep his cattle, goats and chicken. PW1 told the Court that after holding a family meeting, they agreed that they would give the 1<sup>st</sup> Defendant a portion of the land measuring about 2 acres to stay in for a period of six (6) years on condition that the 1<sup>st</sup> Defendant would assist them to obtain title for the entire property.
14. PW1 further told the Court that they did suggest to the 1<sup>st</sup> Defendant that the cost of obtaining a title deed was Kshs. 3,000/- but he also needed to pay another Kshs. 2,000/= for the family's use. The family then gave the 1<sup>st</sup> Defendant documents to start processing the title after the 1<sup>st</sup> Defendant paid them a sum of Kshs. 2,000/-. The 1<sup>st</sup>

Defendant retained the balance of Kshs. 3,000/- which was to be used for the processing of the title deed.

15. PW1 further testified that as agreed, sometime in 1984, the 1<sup>st</sup> Defendant went to the land, picked his livestock and demolished the semi-permanent structure he had built on the land and left after telling the Plaintiff's family to follow up the matter of the title deed with the Kilifi, Lands Office. According to PW1, when they later went to those offices they were told the office was not processing any such title.
16. It was PW1's testimony that when his father Mwadzombo Munga passed away in the year 1993, the 1<sup>st</sup> Defendant re-appeared and started claiming the suit property. He told the Court that he then proceeded to "sue" the 1<sup>st</sup> Defendant at the Chief's Office in Mtwapa but the 1<sup>st</sup> Defendant refused to honour the summons. That was the same position taken by the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs (PW2 and PW3 respectively) who are said to be Mwadzombo Munga's grandchildren.
17. That position was however, rather difficult to justify given the prevailing circumstances herein. According to the 1<sup>st</sup> Defendant, he did not temporarily lease a portion of the land

but he had bought the whole parcel of land from PW1's father Mzee Mwadzombo Munga and had been utilizing the same ever since.

18. In support of that position, the 1<sup>st</sup> Defendant produced a Form of Transfer letter from the Land Registry dated 16<sup>th</sup> September 1978 wherein the said Mwadzombo Munga thumb-printed to indicate that he had thereby transferred all his rights, title and interest in the suit property to the 1<sup>st</sup> Defendant "in consideration of the sum of Kshs. 5,000/-."
19. In addition, the 1<sup>st</sup> Defendant produced a Letter of Consent dated 27<sup>th</sup> November 1978 indicating that following an application made on 30<sup>th</sup> October 1978, the Land Control Board meeting held on 25<sup>th</sup> November 1978 had given its consent to the transaction transferring LR. No. 53A situated within Mtwapa Settlement Scheme from Mwazombo Munga to Samuel Danson Mwamburi, permanently at a consideration of Kshs. 5,000/-.
20. Further and in addition to the foregoing, the 1<sup>st</sup> Defendant has produced an Official Receipt No. 341056 indicating that on 18<sup>th</sup> August 1981, he had paid the sum of Kshs. 25/- as

Legal Fees for Plot No. 53 Mtwapa Scheme to the District Settlement Officer. Another receipt issued on 13<sup>th</sup> October 1981 indicates that the 1<sup>st</sup> Defendant paid the sum of Kshs. 5,846/20 to the Settlement Fund Trustee (SFT) for the same parcel of land.

21. By a letter dated 10<sup>th</sup> April 1982 the District Settlement Officer, Kilifi wrote to the Director of Settlement requesting him to help the 1<sup>st</sup> Defendant get his Title Deed as the 1<sup>st</sup> Defendant had complied with their requirements. On 7<sup>th</sup> September 1982, the 1<sup>st</sup> Defendant was issued with a Land Certificate for the parcel of land measuring 6.7272 Ha.
22. Arising from the foregoing, it was evident to me that PW1's father had not only sold the land to the 1<sup>st</sup> Defendant but he had also clearly participated voluntarily in the process of its transfer to the 1<sup>st</sup> Defendant. That must have been the reason PW1's father made no attempt to wrestle the ownership of the suit property from the 1<sup>st</sup> Defendant until his death in 1993.
23. While the Plaintiffs claim to have reported the actions of the 1<sup>st</sup> Defendant to the Mtwapa area Chief in the same year

1993, it was apparent that they too had not taken any action to reclaim the ownership of the property. Instead they chose to inexplicably wait for another 26 years before they filed this suit against the 1<sup>st</sup> Defendant.

24. Unfortunately for the Plaintiffs, their claim was clearly time-barred under Section 7 of the Limitation of Actions Act which provides thus:

**“7. Actions to recover land**

**An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”**

25. If indeed there was any fraud in the registration of the 1<sup>st</sup> Defendant as proprietor of the suit property as purported by the Plaintiffs, it was clear to me that the Plaintiffs would have with due diligence discovered the fraud at least in the year 1993 when they claim the 1<sup>st</sup> Defendant started claiming ownership of the suit property. They have neither particularized the alleged fraud as required in law nor have

they given any explanation as to why they again waited for another 26 years before instituting this suit.

26. Again while the Plaintiffs purported that the suit property was ancestral land and that they had customary rights thereto, they did readily acknowledge that the property belonged solely to the said Mwadzombo Munga and there was no attempt made to support the contention that the property was ancestral land. From the evidence placed before the Court by the 1<sup>st</sup> Defendant, it was evident that this was Government Land set up under the Settlement Fund Trustees to settle deserving individuals.

27. In the circumstances herein this Court was persuaded that the 1<sup>st</sup> Defendant had clearly demonstrated the root of the Land Certificate issued to him on 7<sup>th</sup> September 1982. In respect of such title, Section 26 of the Land Registration Act 2012 provides as follows:

**“26.(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the**

**person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—**

**(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or**

**(b) where the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme.”**

28. In the matter before me, there was no evidence placed before the Court to demonstrate that the 1<sup>st</sup> Defendant's title had been procured fraudulently and/or through any misrepresentation. There was equally no evidence that the same had been acquired illegally, un-procedurally or through a corrupt scheme.

29. In the premises I find and hold that the Plaintiffs have failed to prove their case on a balance of probabilities. Their suit is hereby dismissed with costs.

30. It is so ordered.

**Judgment dated, signed and delivered in open court and virtually at Mombasa this 19<sup>th</sup> day of February, 2026**

.....  
**J.O. OLOLA**  
**JUDGE**

In the presence of:

- a) Ms. Firdaus Court Assistant.
- b) Mr. Magolo Advocate for the Plaintiffs
- c) Ms. Bwire holding brief for Gakuo Advocate for the 1<sup>st</sup> Defendant
- d) No Appearance Advocate for the 2<sup>nd</sup> Defendant